**FILED** 

## **NOT FOR PUBLICATION**

**AUG 25 2006** 

## UNITED STATES COURT OF APPEALS

CATHY A. CATTERSON, CLERK U.S. COURT OF APPEALS

## FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

No. 05-10163

Plaintiff - Appellee,

D.C. No. CR-04-00135-HDM

V.

MEMORANDUM\*

LUIS ARMANDO MORALES-CASTRO,

Defendant - Appellant.

Appeal from the United States District Court for the District of Nevada Howard D. McKibben, District Judge, Presiding

Submitted August 21, 2006\*\*

Before: GOODWIN, REINHARDT and BEA, Circuit Judges.

Luis Armando Morales-Castro appeals from the 54-month sentence imposed following his guilty-plea conviction for unlawful reentry of a deported alien, in violation of 8 U.S.C. § 1326(a). We have jurisdiction pursuant to 28 U.S.C.

<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

§ 1291, and we affirm.

Morales-Castro contends that the district court erred by adding one criminal history point to his criminal history score based on his prior Nevada DUI conviction because the Nevada DUI statute is overbroad under Taylor v. United States, 495 U.S. 575 (1990), and the government failed to provide proper documentation of that conviction. Both of these contentions are foreclosed by existing case law. See United States v. Ellsworth, No. 05-10365, 2006 WL 2268993, \*4 (9th Cir. Aug. 9, 2006) ("The *Taylor* problem does not arise when dealing with such criminal history facts because they are independent of the nature of the underlying offense."); see also United States v. Marin-Cuevas, 147 F.3d 889, 895 (9th Cir. 1998) (holding that the district court did not err in finding that the defendant had been convicted of certain misdemeanors for purposes of assigning criminal history points where the only evidence of those convictions was the presentence report and defendant did not deny the factual accuracy of the presentence report).

Morales-Castro also contends that his 54-month sentence is unreasonable because the district court refused to reduce his sentence to account for the "unwarranted" sentencing disparities caused by the lack of fast-track systems in some districts. This contention is foreclosed by *United States v. Marcial*-

Santiago, 447 F.3d 715, 719 (9th Cir. 2006) (concluding that "the disparity between Appellants' sentences and the sentences imposed on similarly situated defendants who are not prosecuted in fast-track districts is not unwarranted").

## AFFIRMED.